

SECOND REGULAR SESSION

# HOUSE BILL NO. 1091

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES MCCAHERTY (Sponsor), WIELAND, CROSS, DIEHL,  
MAYFIELD, ENGLISH AND ROORDA (Co-sponsors).

4204H.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 135, RSMo, by adding thereto four new sections relating to port facilities.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 135, RSMo, is amended by adding thereto four new sections, to be  
2 known as sections 135.1660, 135.1662, 135.1664, and 135.1666, to read as follows:

**135.1660. 1. As used in sections 135.1662 to 135.1666, the term “department” shall**  
2 **mean the Missouri department of economic development, and “director” shall mean the**  
3 **director of the department.**

**135.1662. 1. As used in this section, unless the context clearly indicates otherwise,**  
2 **the following terms shall mean:**

3 **(1) "Base year port cargo volume", the total amount of net tons of noncontainerized**  
4 **cargo or twenty-foot equivalent units (TEUs) of cargo actually transported by way of a**  
5 **waterborne ship or vehicle through a port facility during the period from January 1, 2013,**  
6 **through December 31, 2013. Base year port cargo volume must be at least seventy-five net**  
7 **tons of noncontainerized cargo or ten loaded TEUs for a taxpayer to be eligible for the**  
8 **credits provided in this section. For a taxpayer that does not ship that amount in the year**  
9 **ending December 31, 2013, including a taxpayer who locates to Missouri after December**  
10 **31, 2013, its base cargo volume will be measured by the initial January first through**  
11 **December thirty-first calendar year in which it meets the requirements of seventy-five net**  
12 **tons of noncontainerized cargo or ten loaded TEUs. Base year port cargo volume must be**  
13 **recalculated each calendar year after the initial base year;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended  
to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           (2) "Major facility", a new facility to be located in Missouri that is projected to  
15 import or export cargo through a port in excess of twenty-five thousand TEUs or the  
16 noncontainerized cargo equivalent in its first calendar year;

17           (3) "Port cargo volume", the total amount of net tons of noncontainerized cargo or  
18 containers measured in TEUs of cargo transported by way of a waterborne ship or vehicle  
19 through a port facility;

20           (4) "Port facility", any publicly or privately owned facility located within Missouri  
21 through which cargo is transported by way of a waterborne ship or vehicle to or from  
22 destinations outside the state and handles cargo owned by third parties in addition to cargo  
23 owned by the port facility's owner; and

24           (5) "TEU" or "20-foot equivalent unit", a volumetric measure based on the size of  
25 a container that is 20 feet long by eight feet wide by eight feet, six inches high.

26           2. (1) For taxable years beginning on and after January 1, 2014, but before  
27 January 1, 2020, a taxpayer, engaged in the manufacturing of goods or the distribution of  
28 manufactured goods that uses port facilities in this state and increases its port cargo  
29 volume at these facilities by a minimum of five percent in a single calendar year over its  
30 base year port cargo volume, is eligible to claim a credit against the tax levied under  
31 chapter 143 in an amount determined by the department. The department may waive the  
32 requirement that port cargo volume be increased by a minimum of five percent over base  
33 year port cargo volume for any taxpayer that qualifies as a major facility.

34           (2) Qualifying taxpayers that increase their port cargo volume by a minimum of five  
35 percent in a qualifying calendar year shall receive a \$50 credit against the tax levied under  
36 chapter 143 for each TEU or the noncontainerized cargo equivalent above the base year  
37 port cargo volume. A qualifying taxpayer that is a major facility as defined in this section  
38 shall receive a \$50 credit against the tax levied under chapter 143 for each TEU or the  
39 noncontainerized cargo equivalent transported through a port facility during the major  
40 facility's first calendar year. A qualifying taxpayer may not receive more than \$250,000  
41 for each calendar year except as provided for in subdivision (2) of subsection 3. The  
42 maximum amount of credits allowed for all qualifying taxpayers pursuant to this section  
43 shall not exceed \$3.5 million for each calendar year. The department shall allocate the  
44 credits pursuant to the provisions in subdivisions (1) and (2) of subsection 3.

45           (3) If the credit exceeds the taxpayer's tax liability for the taxable year, the excess  
46 amount may be carried forward and claimed against income taxes in the next five  
47 succeeding taxable years.

48           (4) The credit may be claimed by the taxpayer as provided in subdivision (1) of this  
49 subsection only if the taxpayer owns the cargo at the time the port facilities are used.

3. (1) For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the department by March first of the calendar year after the calendar year in which the increase in port cargo volume occurs. The taxpayer shall attach a schedule to the taxpayer's application to the department with the following information and any other information requested by the department:

(a) A description of how the base year port cargo volume and the increase in port cargo volume were determined;

(b) The amount of the base year port cargo volume;

(c) The amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of noncontainerized cargo and TEUs of cargo, including information that demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

(d) Any tax credit utilized by the taxpayer in prior years; and

(e) The amount of tax credit carried over from prior years.

(2) If, on March fifteenth of each year, the \$3.5 million amount of credit is not fully allocated among qualifying taxpayers, then those taxpayers who have been allocated a credit for the prior year shall be allowed a pro rata share of the remaining allocated credit up to \$3.5 million. If on March fifteenth of each year, the cumulative amount of tax credits requested by qualifying taxpayers for the prior year exceeds \$3.5 million, then the \$3.5 million in credits shall be prorated among the qualifying taxpayers who requested the credit.

(3) The taxpayer shall claim the credit on its income tax return in a manner prescribed by the department of revenue. The department may require a copy of the certification form issued by a Missouri port authority be attached to the return or otherwise provided.

4. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in such business entities.

135.1664. 1. As used in this section, unless the context clearly indicates otherwise, the term "international trade facility" shall mean a company that:

(1) Is doing business in the state and engaged in port-related activities, including, but not limited to, warehousing, distribution, freight forwarding and handling, and goods processing;

(2) Has the sole discretion and authority to move cargo, in containers or noncontainerized, originating or terminating in the state;

8           (3) Uses maritime port facilities located in the state; and

9           (4) Uses barges and rail systems to move cargo, in containers or noncontainerized,  
10 through port facilities in the state rather than trucks or other motor vehicles on the state's  
11 highways.

12           2. For taxable years beginning on and after January 1, 2014, but before January 1,  
13 2020, a company that is an international trade facility shall be allowed a credit against the  
14 taxes imposed by chapter 143, excluding withholding tax imposed by sections 143.191 to  
15 143.265, chapter 147, and chapter 148. The amount of the credit shall be \$25 TEU or  
16 sixteen tons of noncontainerized cargo moved by barge or rail rather than by trucks or  
17 other motor vehicles on the state's highways.

18           3. The department shall issue tax credits under this section, and in no case shall the  
19 department issue more than \$2 million in tax credits pursuant to this section in any fiscal  
20 year of the state. In addition, the department shall not issue tax credits under this section  
21 subsequent to the state's fiscal year ending on June 30, 2020. The international trade  
22 facility shall not be allowed to claim any tax credit under this section unless it has applied  
23 to the department for the tax credit and the department has approved the credit. The  
24 department shall determine the credit amount allowable for the year and provide a written  
25 certification to the international trade facility, which certification shall report the amount  
26 of the tax credit approved by the department. The international trade facility shall attach  
27 the certification to the applicable tax return.

28           4. For purposes of this section, the amount of any credit attributable to a  
29 partnership, S corporation, or limited liability company, shall be allocated to the individual  
30 partners, shareholders, or members, respectively, in proportion to their ownership or  
31 interest in such business entities.

32           5. Any credit not usable for the taxable year may be carried over for the next five  
33 taxable years or until such credit is fully taken, whichever occurs first. The amount of the  
34 credit allowed pursuant to this section shall not exceed the tax imposed for such taxable  
35 year. No credit shall be carried back to a preceding taxable year. If a taxpayer that is  
36 subject to the tax limitation imposed pursuant to this subsection is allowed another credit  
37 pursuant to any other provision of law or has a credit carryover from a preceding taxable  
38 year, such taxpayer shall be considered to have first utilized any credit allowed that does  
39 not have a carryover provision, and then any credit that is carried forward from a  
40 preceding taxable year, before using any credit allowed pursuant to this section.

41           6. The department shall issue guidelines for the computation and carryover of the  
42 credits provided under this section and the establishment of criteria for international trade  
43 facilities.

44           7. The department shall promulgate rules to implement the provisions of this  
45 section. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
46 created under the authority delegated in this section shall become effective only if it  
47 complies with and is subject to all of the provisions of chapter 536 and, if applicable,  
48 section 536.028. This section and chapter 536 are nonseverable and if any of the powers  
49 vested with the general assembly under chapter 536 to review, to delay the effective date,  
50 or to disapprove and annul a rule are subsequently held unconstitutional, then the grant  
51 of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be  
52 invalid and void.

          135.1666. 1. As used in this section, unless the context requires a different meaning,  
2 the following terms shall mean:

3           (1) "Affiliated companies", two or more companies related to each other so that:

4           (a) One company owns at least eighty percent of the voting power of the other or  
5 others; or

6           (b) The same interest owns at least eighty percent of the voting power of two or  
7 more companies.

8           (2) "Capital investment", the amount properly chargeable to a capital account for  
9 improvements to rehabilitate or expand depreciable real property placed in service during  
10 the taxable year and the cost of machinery, tools, and equipment used in an international  
11 trade facility directly related to the movement of cargo. "Capital investment" includes  
12 expenditures associated with any exterior, structural, mechanical, or electrical  
13 improvements necessary to expand or rehabilitate a building for commercial or industrial  
14 use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other  
15 land improvements. For purposes of this section, machinery, tools, and equipment shall  
16 be deemed to include only that property placed in service by the international trade facility  
17 on or after January 1, 2013. Machinery, tools, and equipment excludes property:

18           (a) For which a credit under this section was previously granted;

19           (b) Placed in service by the taxpayer, a related party as defined in 267(b) of the  
20 Internal Revenue Code, as amended, or by a trade or business under common control as  
21 defined in 52(b) of the Internal Revenue Code, as amended; or

22           (c) Previously in service in the state that has a basis in the hands of the person  
23 acquiring it, determined in whole or in part by reference to the basis of such property in  
24 the hands of the person from whom acquired or 1014(a) of the Internal Revenue Code, as  
25 amended. "Capital investment" shall not include:

26           a. The cost of acquiring any real property or building;

27           b. The cost of furnishings;

- 28           c. Any expenditure associated with appraisal, architectural, engineering, or interior  
29 design fees;
- 30           d. Loan fees, points, or capitalized interest;
- 31           e. Legal, accounting, realtor, sales and marketing, or other professional fees;
- 32           f. Closing costs, permit fees, user fees, zoning fees, impact fees, and inspection fees;
- 33           g. Bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary  
34 facilities costs incurred during construction;
- 35           h. Utility hook-up or access fees;
- 36           i. Outbuildings; or
- 37           j. The cost of any well or septic system.
- 38           (3) "Credit year", the first taxable year following the taxable year in which the  
39 international trade facility commenced or expanded its operations. A separate credit year  
40 and a three-year allowance shall exist for each distinct international trade facility of a  
41 single taxpayer.
- 42           (4) "International trade facility", a company that:
- 43           (a) Is engaged in port-related activities, including, but not limited to, warehousing,  
44 distribution, freight forwarding and handling, and goods processing;
- 45           (b) Uses maritime port facilities located in the state; and
- 46           (c) Transports at least ten percent more cargo, measured in TEU marine containers  
47 or the noncontainerized cargo equivalent, through maritime port facilities in the state  
48 during the taxable year than was transported by the company through such facilities  
49 during the preceding taxable year.
- 50           (5) "New, permanent full-time position", a job of indefinite duration, created by the  
51 company after establishing or expanding an international trade facility in the state,  
52 requiring a minimum of thirty-five hours of employment per week for each employee for  
53 the entire normal year of the company's operations, or a position of indefinite duration  
54 that requires a minimum of thirty-five hours of employment per week for each employee  
55 for the portion of the taxable year in which the employee was initially hired for, or  
56 transferred to, the international trade facility in the state. Seasonal or temporary  
57 positions, or a job created when a job function is shifted from an existing location in the  
58 state to the international trade facility, and positions in building and grounds maintenance,  
59 security, and other such positions that are ancillary to the principal activities performed  
60 by the employees at the international trade facility shall not qualify as new, permanent full-  
61 time positions.
- 62           (6) "Normal year", at least forty-eight weeks in a calendar year.

63           (7) "Qualified full-time employee", an employee filling a new, permanent full-time  
64 position in an international trade facility in the state.

65           (8) "Qualified trade activities", the completed exportation or importation of at least  
66 one International Organization for Standardization ocean container, or the  
67 noncontainerized equivalent, with a minimum twenty foot length, through a Missouri port  
68 authority-operated cargo facility. An export container or the noncontainerized cargo  
69 equivalent with an ultimate international destination must be loaded on a barge and an  
70 import container or the noncontainerized cargo equivalent originating from an  
71 international destination must be discharged from a barge at such facility.

72           2. For taxable years beginning on and after January 1, 2014, but before January 1,  
73 2020, a taxpayer satisfying the requirements of this section shall be allowed a credit against  
74 the taxes imposed by chapter 143. The amount of the credit earned pursuant to this section  
75 shall be equal to either (i) \$3,500 per qualified full-time employee that results from  
76 increased qualified trade activities by the taxpayer or (ii) an amount equal to two percent  
77 of the capital investment made by the taxpayer to facilitate the increased qualified trade  
78 activities. The election of which tax credit amount to claim shall be the responsibility of  
79 the taxpayer. Both tax credits shall not be claimed for the same activities that occur in a  
80 calendar year. The portion of the \$3,500 credit earned with respect to any qualified full-  
81 time employee who works in the state for less than twelve full months during the credit  
82 year shall be determined by multiplying the credit amount by a fraction, the numerator of  
83 which is the number of full months such employee worked for the international trade  
84 facility in the state during the credit year and the denominator of which is twelve.

85           3. The department shall issue tax credits under this section, and in no case shall the  
86 department issue more than \$500,000 in tax credits pursuant to this section in any fiscal  
87 year of the state. If the amount of tax credits requested under this section for any taxable  
88 year exceeds \$500,000, such credits shall be allocated proportionately among all qualified  
89 taxpayers. The department shall not issue tax credits under this section subsequent to the  
90 state's fiscal year ending on June 30, 2020. The taxpayer shall not be allowed to claim any  
91 tax credit under this section unless it has applied to the department for the tax credit and  
92 the department has approved the credit. The department shall determine the credit  
93 amount allowable for the taxable year and shall provide a written certification to the  
94 taxpayer, which certification shall report the amount of the tax credit approved by the  
95 department. The taxpayer shall attach the certification to the applicable income tax  
96 return.

97           4. The amount of the credit allowed pursuant to this section shall not exceed fifty  
98 percent of the tax imposed for the taxable year. Any remaining credit amount may be

99 carried forward for the next ten taxable years. In the event a taxpayer who is subject to  
100 the limitation imposed pursuant to this subsection is allowed a different tax credit pursuant  
101 to another provision of law, or has a credit carry forward from a preceding taxable year,  
102 such taxpayer shall be considered to have first utilized any credit that does not have a  
103 carry forward provision, and then any credit carried forward from a preceding taxable  
104 year, before using any of the credit allowed pursuant to this section.

105 **5. No credit shall be earned for any employee:**

106 (1) For whom a credit under this section was previously earned by a related party  
107 as defined in section 267(b) of the Internal Revenue Code, as amended, or a trade or  
108 business under common control as defined in section 52(b) of the Internal Revenue Code,  
109 as amended;

110 (2) Who was previously employed in the same job function in Missouri by a related  
111 party as defined in section 267(b) of the Internal Revenue Code, as amended, or a trade or  
112 business under common control as defined in section 52(b) of the Internal Revenue Code,  
113 as amended; or

114 (3) Whose job function was previously performed at a different location in Missouri  
115 by an employee of the taxpayer, by a related party as defined in section 267(b) of the  
116 Internal Revenue Code, as amended, or by a trade or business under common control as  
117 defined in section 52(b) of the Internal Revenue Code, as amended.

118 **6. For purposes of this section, the amount of any credit attributable to a**  
119 **partnership, electing small business corporation (S corporation), or limited liability**  
120 **company shall be allocated to the individual partners, shareholders, or members,**  
121 **respectively, in proportion to their ownership or interest in such business entities.**

122 **7. For purposes of this section, two or more affiliated companies may elect to**  
123 **aggregate the number of jobs created for qualified full-time employees or the amounts of**  
124 **capital investments as the result of the establishment or expansion by the individual**  
125 **companies in order to qualify for the credit allowed herein.**

126 **8. Recapture of the credit amount, under the following circumstances, shall be**  
127 **accomplished by increasing the tax in any of the five years succeeding the taxable year in**  
128 **which a credit has been earned pursuant to this section if the number of qualified full-time**  
129 **employees falls below the average number of qualified full-time employees during the**  
130 **taxable year. The tax increase amount shall be determined by recalculating the credit that**  
131 **would have been earned for the original taxable year using the decreased number of**  
132 **qualified full-time employees and subtracting the recalculated credit amount from the**  
133 **amount previously earned. In the event that the average number of qualified full-time**  
134 **employees employed at an international trade facility falls below the number employed by**



the taxpayer prior to claiming any credits pursuant to this section in any of the five taxable years succeeding the year in which the credits were earned, all credits earned with respect to the international trade facility shall be recaptured. No credit amount shall be recaptured more than once pursuant to this subsection. Any recapture pursuant to this subsection shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability is increased.

9. The department shall issue guidelines for:

(1) The computation, carryover, and recapture of the credits provided under this section;

(2) The establishment of criteria for:

(a) International trade facilities;

(b) Qualified full-time employees at such facilities; and

(c) Capital investments; and

(3) The computation, carryover, recapture, and redemption of the credit by affiliated companies.

10. The department shall promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be invalid and void.

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